

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JOSEPH DICESARE, CARMEN NICOTERA, SR,  
CARMEN NICOTERA, JR, DANIEL WELLINGTON,  
JACK ENDRYCK, RICHARD ALEXANDER, ROBERT  
KORRIE and PETER S. HALLOCK, as Trustees of  
the Laborers' Local No. 35 Pension Fund, Defined  
Contribution Fund and Health Care Fund,

6:06-CV-335

Plaintiffs,

vs

D & H BLACK TOP CO., INC.,

Defendant.

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APPEARANCES:

OF COUNSEL:

DAVID A. KLINE, ESQ.  
Attorney for Plaintiffs  
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Fayetteville, NY 13066

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ROBERT M. CHEVERIE, ESQ.

DIANE M. MARTIN-GRANDE, ESQ.  
Attorney for Defendant  
301 Black River Boulevard  
Rome, New York 13440

DAVID N. HURD  
United States District Judge

**ORDER**

Plaintiffs have moved for summary judgment pursuant to Fed. R. Civ. P. 56. There was no opposition. The motion was taken on submit on June 22, 2007.

NOW, therefore, it is

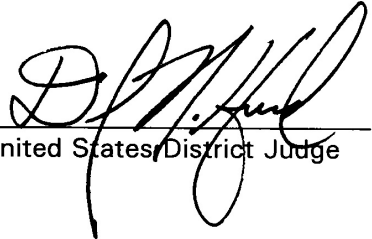
ORDERED, that

1. Plaintiffs' motion is GRANTED;
2. Defendant pay to plaintiffs the amount of \$27,357.50, representing contributions due the Plaintiff Funds, interest, liquidated damages, and attorneys fees;
3. Defendant submit to an audit of its records within thirty (30) days of service of this order upon defendant by first class mail;
4. Should said audit disclose that further amounts are due the Plaintiff Funds, plaintiffs are granted leave to renew this motion for Summary Judgment within ninety (90) days of the completion of said audit; and
5. If no further amounts are due, plaintiffs shall notify this Court for further proceedings consistent with this Order.

The Clerk is directed to file judgment accordingly.

IT IS SO ORDERED.

Dated: June 27, 2007  
Utica, New York.

  
United States District Judge